

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

1998 Biennial Regulatory Review –
Amendment of Part 0 of the
Commission's Rules to Close the
Wireless Telecommunications
Bureau's Gettysburg Reference
Facility

WT Docket No. 98-160

REPORT AND ORDER

Adopted: March 11, 1999

Released: March 24, 1999

1. INTRODUCTION AND BACKGROUND

1. In this *Report and Order* we amend our rules to eliminate the Wireless Telecommunications Bureau's Reference Room in Gettysburg, Pennsylvania. We also update Section 0.453 of the Commission's Rules to accurately reflect the location and availability of license application information within the Wireless Bureau.

2. The Commission is constantly seeking to streamline its operations and improve the quality of service we provide. In a Notice of Inquiry released February 16, 1996¹, we solicited suggestions for improving the Commission's processes. Those who responded with comments suggested that the Commission's expert staff be utilized to perform tasks other than ministerial ones. These ministerial tasks include retrieving applications, responding to inquiries related to those applications, and other activities not involving the use of agency discretion.

3. Section 11 of the Communications Act, as amended, requires the Commission to conduct a biennial review of regulations applicable to providers of telecommunications services and to repeal or modify any regulation it determines to be no longer necessary in the public interest.² Accordingly, the

¹See *Improving the Commission's Processes*, PP Docket 96-17, *Notice of Inquiry*, 11 FCC Rcd 14006 (February 16, 1996).

²47 U.S.C. §161(a)(2).

Commission initiated a comprehensive 1998 biennial review to promote meaningful deregulation and streamlining where such action is warranted.³

4. The Gettysburg reference facility operates differently from other Commission reference rooms. It contains several personal computers networked to allow users to query the Commission's licensing databases for wireless services. These computers can also access pending application data for most land mobile services. Since these computers were made available in the Gettysburg reference facility several years ago, requests to access the actual paper applications have significantly decreased. If desired, the paper applications can be retrieved by the Commission's staff in Gettysburg or by the duplication services contractor.⁴

5. In addition to accessing data through computers at the Gettysburg reference facility, the public may also retrieve information from their own computers. By connecting to the Wireless Bureau's home page at the Commission's World Wide Web site⁵, interested parties can retrieve data concerning licenses and applications for wireless authorizations.

6. The use of electronic filing to request new, modified, and renewed authorizations for wireless services continues to increase. Currently, more than half of the applications for wireless services are received by electronic means.⁶ Applicants for auctions were required to file both FCC Form 175 and FCC Form 601 electronically as of January 1, 1999.⁷ Our recently adopted *Report and Order* concerning the Wireless Bureau's Universal Licensing System (ULS)⁸ mandates electronic filing for applicants and licensees in services that are licensed by auction, and for frequency coordinators as well as volunteer examiner-coordinators in the Amateur service. This requirement will take effect on July 1, 1999, or six months after we begin use of ULS in the particular service, whichever is later. Since no paper is involved with these applications, retrieval of data concerning these requests must be done by accessing the Commission's databases.

³See 1998 Biennial Review of FCC Regulations Begun Early, FCC News Release (November 18, 1997).

⁴Currently, the Commission's duplication services contractor is International Transcription Service (ITS).

⁵<http://www.fcc.gov/wtb/>

⁶This includes on-line filing, electronic data interchange, electronic batch filing, and extracts of data provided by Mellon Bank (the Commission's lockbox bank for fees) for renewals and Restricted Radiotelephone Operator Permits.

⁷Amendment of Part 1 of the Commission's Rules -- Competitive Bidding Procedures, *Third Report and Second Further Notice of Proposed Rulemaking*, 13 FCC Rcd. 374, 412, ¶62 (1997).

⁸Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, *Report and Order*, FCC Rcd (1998).

7. On August 31, 1998, we adopted a *Notice of Proposed Rulemaking (NPRM)*⁹ seeking to streamline our operations through closure of the Gettysburg reference facility. We noted that the closing of this reference room recognizes the increase in electronic filing of applications for wireless licenses and the availability of information to many more potential users due to the accessibility of license and application records via the Internet.

8. We received two comments on the *NPRM* from Comsearch and from Blooston, Mordkofsky, Jackson & Dickens (BMJD). We also received one set of timely filed reply comments from Brown and Schwaninger (B&S). Chadmoore Wireless Group filed reply comments after the deadline established in the *NPRM*. It should be noted that their comments support those of Comsearch and BMJD without raising any additional substantive points.

2. DISCUSSION

9. In the *NPRM*, we stated that electronic access to application and licensing data made available by the Commission will provide improved research capabilities over what is currently available in the public reference room in Gettysburg.¹⁰ The Wireless Bureau's staff in Gettysburg would continue to accept requests to retrieve documents available for public inspection, and the Commission's duplication services contractor would also make copies of documents by request for an established fee. We concluded that the improvements in public access to licensing data, coupled with alternatives for viewing copies of paper applications, enable us to close the Gettysburg reference facility. We sought comments on this proposal.

10. Neither Comsearch nor BMJD objected to the proposal to close the reference facility.¹¹ However, both they and B&S contend that the information currently available through the Internet does not include all of the data that can be accessed through the Gettysburg reference facility. Comsearch notes that ULS does not yet include systems licensed in Part 101.¹² BMJD and B&S found instances where information available over the Internet was inconsistent with information obtained in the reference facility, or where needed information simply was not available.¹³ Comsearch and BMJD believe that the closure of the Gettysburg reference facility should be delayed until the application and license information available in paper form through the reference facility is available electronically.¹⁴

⁹ Amendment of Part 0 of the Commission's Rules to Close the Wireless Telecommunications Bureau's Gettysburg Reference Facility, *Notice of Proposed Rulemaking*, FCC Rcd (1998)(*Gettysburg NPRM*).

¹⁰ *Gettysburg NPRM* at ¶10.

¹¹ Comsearch comments at 1(proposal "appears to have merit in light of decreasing demand and the availability of data electronically"); BMJD comments at 2 (does not object to closing but suggests that it be delayed).

¹² Comsearch comments at 2.

¹³ BMJD comments at 2-4; B&S comments at 5-8.

11. Due to the increasing volume of electronic application filing and the development of ULS and its improved access capabilities, we believe that closing the Gettysburg reference facility is in the best interest of the Commission and its customers. We agree, however, with requests to modify the timing of this closure. While we could adopt the original proposal in the *NPRM* to close the Gettysburg reference facility 90 days after release of this final order, we believe this would bring about an increase in the number of requests on the Wireless Bureau's staff in Gettysburg to retrieve paper applications in order to provide information not currently available via the Internet. This is not only an inconvenience for the public, it would require more staff resources to meet these requests than would be necessary if we continue to temporarily operate the Gettysburg reference facility.

12. The effective dates for requiring certain applications to be electronically filed will not take place until later this year. We anticipate that ULS will be fully operational in all wireless services during 1999. Once these initiatives are implemented, there will be fewer paper applications and far more information available from the bureau's single licensing database. ULS will be the sole source for providing licensing and application data to both Commission staff and the general public.

13. In order to attain the efficiencies that would occur from closing the Gettysburg reference facility, and to continue to provide excellent service to the public, we modify our proposal in the *NPRM*. The Gettysburg reference facility will close 90 days after we begin use of ULS for all services licensed by the Wireless Bureau. This will provide a reasonable period of time for those who use the Gettysburg reference facility to become familiar with the information retrieval capabilities of ULS. Once all services licensed by the Wireless Bureau are converted to ULS, the Bureau will issue a public notice announcing the specific date upon which the Gettysburg reference facility will close.

14. The reply comments filed by B&S raised several other concerns related to the proposal in the *NPRM*. B&S believes that if the Gettysburg reference facility were to close, the inadequacy of the on-line licensing data would effectively preclude the right of an interested party to file a competent petition to deny or petition for reconsideration.¹⁵ B&S also contends that providing only the on-line licensing data is not in the public interest.¹⁶ We believe that our decision to delay closure of the reference facility until 90 days after we begin use of ULS for all services licensed by the Wireless Bureau will alleviate these concerns. ULS will provide on-line access or information concerning substantive attachments and exhibits to an application. Substantive attachments and exhibits will be scanned into the ULS, creating a full electronic record.¹⁷ In addition, petitions to deny an application and petitions for reconsideration of the disposition of an application can more easily be associated with the underlying application, providing a greater likelihood that interested persons will create a competent filing.

¹⁴ Comsearch comments at 2; BMJD comments at 4-5.

¹⁵ B&S comments at 8-10.

¹⁶ B&S comments at 12.

¹⁷ Non-substantive attachments would include cover letters and any other documents that contain no information related to the application.

15. B&S contends that the Commission is making an incorrect assumption that only pending applications and granted licenses are of interest to the public. They cite instances where historical data, often the application by which a license was originally granted, is necessary to exercise due diligence. B&S particularly cites the future relocation of incumbent licensees in the Upper 200 channels of the 800 MHz SMR band as an example of where historical license information is needed.¹⁸ B&S contends, however, that this information is available only in Gettysburg and would not be available if the reference facility is closed. Currently, older applications must be requested at the counter in the lobby of the Gettysburg facility. Even if historical application data is not included for electronic retrieval, this counter will continue to be open for such requests even after the reference facility is closed.

16. B&S states that the Commission “apparently intends to charge \$2.30 per minute for access via the ULS on the Commission’s wide area network” and that a cost-study is needed to determine the correct pricing the Commission should levy for this information.¹⁹ There is no need for such a cost-study at the present time, as we do not contemplate charging for access to electronic licensing data.

17. B&S contends that the *NPRM* does not make clear the manner in which the Commission will make information available electronically.²⁰ We disagree. The change to Section 0.453(o) of the Commission’s Rules proposed in the *NPRM* states that “all authorizations in the Wireless Radio services are available for public inspection via the Commission’s wide area network.”

18. Finally, B&S states that Section 11 of the Communications Act, as amended, 47 U.S.C. §161, does not provide of authority for modification of Section 0.453 and 0.455 of the Commission’s Rules.²¹ We disagree. The Commission has determined that the first biennial review represents an excellent opportunity for a serious examination of all of our regulations, not just those statutorily required to be reviewed. Clearly the collection and retrieval of application and licensing data applies to the operation and activities of any provider of telecommunications service. Citing Section 11 in the *NPRM* and in this *Report and Order* as a source of authority for modifying the Commission’s Rules is appropriate, as the modification arises from the biennial review process established in that section.

19. Along with the actions discussed above, we also make two minor amendments to Section 0.453 to reflect changes made in previous Commission reorganizations. No comments or reply comments were filed concerning these amendments. Section 0.453(g)(1) states that application files and related materials for Microwave Point-to-Point and Digital Electronic Message Service (DEMS) are located in the Common Carrier Bureau, Domestic Facilities Reference Room in Washington, DC. For the past five years, applications for those services have been received and processed in Gettysburg. All station records were transferred to Gettysburg at that time and have been accessible through the Gettysburg reference room. These are among the records that will be available for electronic public access. Therefore we will delete Section 0.453(g)(1) from the Commission’s rules.

¹⁸ B&S comments at 10-12.

¹⁹ B&S comments at 13.

²⁰ B&S comments at 12.

²¹ B&S comments at 14-15.

20. Section 0.453(h) identifies the contents of the Common Carrier Bureau, Mobile Services Reference Room. On December 1, 1994, the Mobile Services Division of the Common Carrier Bureau became part of the Wireless Bureau. Section 0.453(h) is being amended to reflect this change.

3. REGULATORY FLEXIBILITY ANALYSIS

21. We certify that the Regulatory Flexibility Act of 1980 does not apply to this rulemaking proceeding because, if the proposed rule amendments are promulgated, there will not be a significant economic impact on a substantial number of small business entities defined in Section 601(3) of the Regulatory Flexibility Act. The proposed changes will place no significant burdens on small business entities, and other changes being implemented by the Commission will make it easier for those entities to research and retrieve licensing data electronically regardless of their location. The Commission's Office of Public Affairs, Reference Operations Division shall cause a copy of this *Report and Order*, including this certification, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act. Public Law No. 96-354, 94 Stat. 1164, 5 U.S.C. §§601 *et seq.* (1981).

4. ORDERING CLAUSES

22. Accordingly, IT IS ORDERED that, pursuant to the authority of Sections 4(i), 11 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 161 and 303(r), Part 0 of the Commission's Rules, 47 C.F.R. Part 0, IS AMENDED as set forth below. Amendments to Section 0.453(g) and (h) are effective sixty days after publication of this *Report and Order* in the *Federal Register*. Amendments to Sections 0.453(l) and (o) and 0.455(f) are effective ninety days after we begin use of ULS for all services licensed by the Wireless Telecommunications Bureau. The Wireless Bureau will issue a public notice announcing the specific date upon which these amendments become effective.

23. IT IS FURTHER ORDERED that the Commission's Office of Public Affairs, Reference Operations Division, SHALL SEND a copy of this *Report and Order*, including the Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. §§ 601 *et seq.*

24. For further information, contact Walter Boswell, Wireless Telecommunications Bureau, (717) 338-2601.

FEDERAL COMMUNICATIONS COMMISSION



Magalie Roman Salas
Secretary

**Appendix
Final Rules**

Part 0 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

Part 0 - Commission Organization

1. The authority citation for Part 0 continues to read as follows:

Authority: § 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

Sections 0.453 and 0.455 are amended to reflect the closing of the public reference room in Gettysburg, PA: -

§0.453 Public reference rooms.

The Commission maintains the following public reference rooms at its offices in Washington, DC:

(g) *The Common Carrier Bureau, Network Services Division Public Reference Room.* Section 214 applications and related files, to the extent that they concern domestic communications facilities and services are available for inspection at this location.

(h) *The Wireless Telecommunications Bureau, Commercial Mobile Services Reference Room.* The following documents, files and records are available for inspection at two different locations. The Legal Branch is the responsible custodian for both locations.

(1) Station files containing a complete history of data submitted by the applicant that has been approved by the Commission which includes maps, diagrams, petitions, co-channel searches, and other background material.

(2) Pending files containing applications for additional facilities or modifications of existing facilities.

(3) Cellular Granted Station files and related materials.

(4) Pending cellular applications and related files.

(5) Petitions and related materials.

(l) (Reserved)

(o) Electronically stored application and licensing data for commercial radio operators and for all authorizations in the Wireless Radio services are available for public inspection via the Commission's wide area network. Wireless Radio services include Commercial and Private Mobile Radio, Common Carrier and Private Operational Fixed Point-to-Point Microwave, Local Television Transmission Service (LTTS), Digital Electronic Message Service (DEMS), Aviation Ground and Marine Coast applications.

§0.455 Other locations at which records may be inspected.

(f) *Wireless Telecommunications Bureau.* See §0.453(o) of this chapter.
